



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2020-0424]

RIN 1625-AA00

Safety Zones; Vieques Unexploded Ordnance Operations, East Vieques; Vieques, Puerto Rico

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent safety zones for certain waters of Vieques, Puerto Rico. This action is necessary to provide for the safety of life on the navigable waters near the island of Vieques, Puerto Rico due to unexploded ordnances. This rulemaking will prohibit mariners from anchoring, dredging, or trawling in the designated areas. It will also prohibit persons and vessels from being in the safety zones during clearance operations, unless authorized by the Captain of the Port San Juan or a designated representative.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0424 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Natallia Lopez, Sector San Juan Prevention Department,

Waterways Management Division, U.S. Coast Guard; telephone 787-729-2380, email ssjwwm@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
PR	Puerto Rico
§	Section
U.S.C.	United States Code
UXO	Unexploded Ordnance

II. Background Information and Regulatory History

On April 30, 2020, contractors on behalf of the U.S. Navy contacted the Coast Guard requesting the establishment of permanent safety zones surrounding unexploded ordnances (UXO) in Vieques, PR. The Navy has implemented long-term plans for the deactivation and removal of the UXOs, but safety zones are needed until those operations are completed. The Captain of the Port San Juan (COTP) has determined that potential hazards associated with the UXOs would be a safety concern for anyone within the designated areas. In response, on October 19, 2020, the Coast Guard published a notice of proposed rulemaking (NPRM) titled, “Safety Zones; Vieques Unexploded Ordnance Operations, East Vieques; Vieques, Puerto Rico” (85 FR 66290). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to the safety zones. During the comment period that ended November 18, 2020, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because doing so would be impracticable and contrary to the public interest. Delaying the effective date of this rule would be contrary to the safety zone’s intended objectives

of protecting persons and vessels from the potential safety hazards associated with UXOs ordnance clearing operations on the waters of East Vieques, Vieques, Puerto Rico.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The COTP has determined that potential hazards associated with the UXOs would be a safety concern for anyone within the designated areas. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zones.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published on October 19, 2020. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes safety zones in the navigable waters east of Vieques, Puerto Rico. UXOs from past military training operations remain present in the waters of east Vieques, Puerto Rico. The U.S. Navy is currently in the process of planning, retrieving, and properly disposing of the UXOs in this area. These operations will be ongoing for the next 20 years. Accordingly, ordnance clearing operations will be held at various times on the waters of East Vieques, Vieques, Puerto Rico. UXOs will be retrieved by several divers working for the U.S. Navy.

The safety zone areas encompass the waters in East Vieques, Vieques, Puerto Rico. In areas where UXOs are present in shallow waters, mariners have been known to anchor which creates risk for the unintended detonation of UXOs. The safety zones will prohibit vessels from anchoring, dredging, or trawling in the designated areas at all times. Further, no vessel or person will be permitted to enter, transit through, or remain in the safety zones during clearance operations due to increased risk of explosion and fragmentation hazards.

Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the permanent safety zones by contacting the Captain of the Port San Juan by VHF-FM radio on Channels 16 and 22A, by calling Sector San Juan Command Center at (787) 289-2041, or via email to ssjcc@uscg.mil. If authorization to enter, transit through, or remain in the zones during ordnance clearing operations or anchor, dredge, or trawl at any time is granted, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and restrictions of the safety zones. Vessels will be permitted to enter the safety zones when UXO operations are not being conducted so long as they do not anchor, dredge, or trawl.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during

rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of two safety zones. It is categorically excluded from further review under

paragraph L60(a) Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev.

1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.787 to read as follows:

§ 165.787 Safety Zones; Vieques Unexploded Ordnance Operations, East Vieques; Vieques, Puerto Rico.

(a) *Regulated area.* The following regulated areas are established as a safety zones:

(1) All waters of East Vieques, Vieques, Puerto Rico encompassed within the following points: starting at Point 1 in position 18° 08' 56.48"N, 065° 20' 10.69"W; thence north to point 2 in position 18° 09' 10.72"N, 065° 20' 04.11"W; thence east to Point 3 in position

18° 08' 50.19"N, 065° 17' 05.78"W; thence south to Point 4 in position 18° 08' 05.79"N, 065° 16' 16.70"W.

(2) All waters of East Vieques, Vieques, Puerto Rico encompassed within the following points: starting at Point 1 in position 18° 07' 38.60"N, 065° 17' 45.95"W; thence south to point 2 in position 18° 07' 23.73"N, 065° 17' 58.34"W; thence west to Point 3 in position 18° 07' 18.77"N, 065° 18' 29.64"W; thence north to Point 4 in position 18° 07' 34.47"N, 065° 18' 31.82"W.

(b) *Regulations.* (1) No person or vessel may anchor, dredge, or trawl in the safety zones unless authorized by the Captain of the Port (COTP), San Juan, Puerto Rico, or a designated Coast Guard commissioned, warrant, or petty officer. Those in the safety zones must comply with all lawful orders or directions given to them by the COTP or the designated Coast Guard commissioned, warrant, or petty officer.

(2) No person or vessel may enter, transit or remain in the safety zones during unexploded ordnance clearance operations, unless authorized by the Captain of the Port San Juan or a designated representative.

(3) Vessels encountering emergencies, which require transit through the safety zones, should contact the Coast Guard patrol craft or Duty Officer on VHF Channel 16. In the event of an emergency, the Coast Guard patrol craft may authorize a vessel to transit through the safety zones with a Coast Guard designated escort.

(4) The Captain of the Port and the Duty Officer at Sector San Juan, Puerto Rico, can be contacted at telephone number 787-289-2041. The Coast Guard Patrol Commander enforcing the safety zones can be contacted on VHF-FM channels 16 and 22A.

(5) Coast Guard Sector San Juan will notify the marine community of periods during which these safety zones will be in effect by providing notice to mariners in accordance with § 165.7.

(6) All persons and vessels must comply with the instructions of on-scene patrol

personnel. On-scene patrol personnel include commissioned, warrant, or petty officers of the U.S. Coast Guard. Coast Guard Auxiliary and local or state officials may be present to inform vessel operators of the requirements of this section, and other applicable laws.

Dated: January 11, 2021.

G. H. Magee,

Captain, U.S. Coast Guard,

Captain of the Port San Juan.

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